

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BILLY DRIVER, JR.,

Plaintiff,

v.

KIMBERLY J. MUELLER, et al.,

Defendant.

No. 2:23-cv-01233-DAD-KJN (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DENYING
MOTION TO PROCEED *IN FORMA*
PAUPERIS

(Doc. Nos. 2, 10)

Plaintiff Billy Driver, Jr. is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 28, 2023, the assigned magistrate judge issued findings and recommendations recommending that plaintiff's application to proceed *in forma pauperis* (Doc. No. 2) be denied because: (1) he is subject to the three strikes bar under 28 U.S.C. § 1915(g); and (2) the allegations of plaintiff's complaint do not satisfy the "imminent danger of serious physical injury" exception to § 1915(g). (Doc. No. 10); *see Andrews v. Cervantes*, 493 F.3d 1047, 1051–55 (9th Cir. 2007). The magistrate judge also recommended that plaintiff be ordered to pay the required \$402.00 filing fee in full in order to proceed with this action. (*Id.* at 6.) The findings and recommendations were served on plaintiff and contained notice that any objections thereto were

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1 to be filed within twenty-one (21) days after service. (*Id.*) To date, no objections to those
2 findings and recommendations have been filed, and the time in which to do so has now passed.

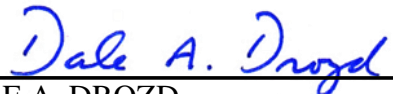
3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the undersigned has
4 conducted a *de novo* review of the case. Having carefully reviewed the entire file, the
5 undersigned concludes that the findings and recommendations are supported by the record and
6 proper analysis.

7 Accordingly,

- 8 1. The findings and recommendations issued on July 28, 2023 (Doc. No. 10) are
9 adopted;
- 10 2. Plaintiff's motion to proceed *in forma pauperis* (Doc. No. 2) is denied;
- 11 3. Within thirty (30) days from the date of service of this order, plaintiff shall pay the
12 \$402.00 filing fee in full in order to proceed with this action;
- 13 4. Plaintiff is forewarned that failure to pay the filing fee within the specified time
14 will result in the dismissal of this action; and
- 15 5. This matter is referred back to the assigned magistrate judge for further
16 proceedings consistent with this order.

17 IT IS SO ORDERED.

18 Dated: October 18, 2023

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20 DALE A. DROZD
21 UNITED STATES DISTRICT JUDGE
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